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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,458	07/11/2003	Douglas Herrin Benson	6808D	3234

27752 7590 08/10/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,458

Applicant(s)

BENSON ET AL.

Examiner

Jeff H. Aftergut

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-17-03</u> . | 6) <input type="checkbox"/> Other: ____. |

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-20 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 5,914,084.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims as presented herein are completely covered by the claims of the earlier patent. Namely, the earlier patent included various additional steps which were performed (an initial incremental stretching step prior to the tensioning and mechanical stabilization steps of the newly presented claims, noting that the mechanical stabilization operation is in fact an incremental stretching step). It would have been obvious to one of ordinary skill in the art that practicing the processes of '084 would have resulted in practicing the process of the newly presented claims herein and granting of another patent for such is deemed extension of the exclusive right against public policy.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-13, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Morman '992.

Morman '992 taught that it was known at the time the invention was made to provide a neckable material including meltblown and spunbonded webs 12, applying a tension force to the neckable material to neck the same with the use of an s-roll arrangement 18 and a bonder roll arrangement 26 where the peripheral linear speed of the rolls of the s-roll arrangement were operated at a lower speed than the peripheral linear speed of the bonding roll arrangement 26, and subjected the necked material to mechanical stabilization by feeding the necked material through a nip formed by a pair of patterned compression rollers where the rollers 28 and 30 were provided with a suitable pattern and heat and pressure was applied, see column 8, lines 30-40.

With respect to claim 6, note that the reference suggested a patterned roll for stabilization and as depicted in Figure 5 such included application of the embossments across the entire width of the material. Regarding claim 7, note that the reference suggested that the material was a metlblown or spunbonded material. Regarding claim 8, the reference suggested that the neckable material could have been formed from polyolefins. Regarding claim 9, note that the polyolefins included polyethylene and

polypropylene, see column 5, lines 57-65. Regarding claim 10, note that the neckable material could include pulp fibers therein, see column 6, lines 22-36. Regarding claims 11-13, note that the reference suggested that the material which was necked and stabilized was joined to an elastic film formed from an A-B-A block copolymer wherein the same was in the form of a web or film as described with reference to elastic layer 32. Regarding claim 18, note that the reference taught the specific web materials defined. Regarding claim 19, as addressed above the reference taught attachment to an elastic web.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman '992 in view of either one of Sneed et al or Sabee.

Morman '992 suggested that one skilled in the art at the time the invention was made would have subjected the nonwoven web to stretching, however there is no indication that the roller arrangement where the embossing took place included the use of incremental stretching of the nonwoven web. However, one skilled in the art at the time the invention was made would have known to incorporate a pair of incremental stretching rolls in the arrangement for the patterned rolls in light of either one of Sabee or Sneed et al. Each one of Sabee or Sneed et al suggested that those skilled in the art

Art Unit: 1733

would have incorporated a pair of intermeshed rollers to stretch and emboss a nonwoven web. In each of these references the prior art suggested that one skilled in the art would have utilized intermeshed rolls to shape and soften a nonwoven web in a manner similar to the embossing rollers of Morman '992. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of either one of Sabee or Sneed et al (and provide the embossing rollers in Morman '992 with the specified configurations as identified by Sneed or Sabee) in the process of Morman '992 for treating a non-woven web.

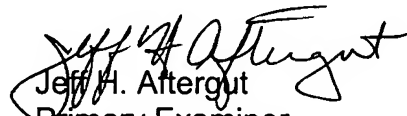
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
August 5, 2005